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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 THE CHAMBERLAIN GROUP, INC.,

9 Plaintiff,

10 v.

11 SHARY NASSIMI,

12 Defendant.

CASE NO. C09-5438BHS

ORDER DENYING
NASSIMI'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT AS TO
CHAMBERLAIN'S "BENEFIT
OF THE BARGAIN"
DAMAGES CLAIM

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14 This matter comes before the Court on Defendant Shary Nassimi's ("Nassimi")
15 motion for partial summary judgment as to Chamberlain Group, Inc.'s ("Chamberlain")
16 "benefit of the bargain" damages (Dkt. 94). The Court has considered the pleadings filed
17 in support of and in opposition to the motion and the remainder of the file and hereby
18 denies Nassimi's partial motion for summary judgment for the reasons stated herein.

19 On August 20, 2010, Nassimi filed the instant motion for partial summary
20 judgment as to Chamberlain's "benefit of the bargain damages." Dkt. 94. On September
21 13, 2010, Chamberlain responded in opposition to the motion. Dkt. 114. On September
22 17, 2010, Nassimi replied. Dkt. 129.


23 Nassimi moves this Court for partial summary judgment to "[bar Chamberlain]
24 from presenting damages expert Neal Beaton ("Beaton") and his opinion regarding
25 Chamberlain's benefit of the bargain damages." Dkt. 94 at 1. Nassimi argues at length
26 about how Chamberlain's expert failed to account for the economic recession and
27 Chamberlain Wireless's operational decisions. *See* Dkt. 94 at 7-11. Yet, Nassimi does not
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1 argue that Chamberlain's benefit of the bargain damages, as a whole, are contrary to
 2 law—only that *Chamberlain's expert's approach* to calculating these damages is
 3 improper. *See id.* at 12-13. In fact, Nassimi admits that Chamberlain is entitled to
 4 damages if liability is established. *Id.* at 17 ("Chamberlain is entitled to the benefit of its
 5 bargain—i.e., the incremental difference between what, on July 27, 2007[,] it thought it
 6 would get and what it received"). In sum, Nassimi has brought a summary judgment
 7 motion on Chamberlain's benefit of the bargain damages but concedes that Chamberlain
 8 would be entitled to benefit of the bargain damages if liability is found.¹

9 In short, Nassimi argues that Beaton employs improper means and methods to
 10 derive the damages allegedly incurred by Chamberlain—not whether Chamberlain is
 11 entitled to benefit of the bargain damages. *See id.* at 16. Nassimi's motion is entirely
 12 directed at Chamberlain's expert, Beaton, and the conclusions drawn from his report. *See*
 13 *id.* Nassimi appears to be raising a *Daubert* motion, but he has not provided the proper
 14 briefing that is required. For such a motion, *see Daubert v. Merrell Dow*
 15 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). While Nassimi has mentioned *Daubert* in
 16 passing and Chamberlain has raised a few of the *Daubert* factors, this motion has not
 17 been properly brought before the Court.

18 Therefore, the Court **DENIES** Nassimi's motion for partial summary judgment as
 19 to Chamberlain's "benefit of the bargain" damages.

20 DATED this 25th day of October, 2010.

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 22 _____
 23 BENJAMIN H. SETTLE
 24 United States District Judge

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 26 ¹This Court held that Nassimi breached the contract as a matter of law. Whether
 27 and what amount of damages that was sustained by Chamberlain is a question of fact for
 28 the jury to decide. *See* Dkt. 145.